

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 09 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IVETH EMPERATRIZ GOMEZ-
HERNANDEZ, aka Iveth Gomez
Hernandez,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-75659

Agency No. A97-310-384

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 18, 2008 **

Before: REINHARDT, LEAVY, and W. FLETCHER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Iveth Emperatriz Gomez-Hernandez, native and citizen of El Salvador, petitions for review of a Board of Immigration Appeals (“BIA”) order dismissing her appeal from an immigration judge’s (“IJ”) decision denying her application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252.

Where, as here, the BIA reviews the IJ’s decision *de novo*, our review is limited to the BIA’s decision, except to the extent the IJ’s opinion is expressly adopted. *See Shah v. INS*, 220 F.3d 1062, 1067 (9th Cir. 2000). We review due process claims *de novo*, reversing only if the proceedings were so fundamentally unfair that the alien was prevented from reasonably presenting her case. *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). We dismiss in part and deny in part the petition for review.

In her opening brief, Gomez-Hernandez fails to address, and therefore has waived, any challenge to the agency’s determination that she is ineligible for relief on the merits of her asylum, withholding, and CAT claims. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

The court does not have jurisdiction to review Gomez-Hernandez’s due process challenge based on the IJ’s alleged failure to forward her application to the

Department of State, because she did not exhaust the issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 676-78 (9th Cir. 2004).

Finally, even if the IJ erred by failing to discuss the State Department's country report on El Salvador, the BIA's discussion of the country report cured any error. *See Ghaly v. INS*, 58 F.3d 1425, 1430 (9th Cir. 1995) (any error caused by the IJ's refusal to consider the petitioner's exhibits was cured by the BIA's subsequent consideration of that evidence). Accordingly, Gomez-Hernandez did not show the agency prevented her from reasonably presenting her case. *See id.*

Gomez-Hernandez's counsel is cautioned that her opening brief does not meet this court's standards. *See generally* Fed. R. App. P. 28; 9th Cir. R. 28-2.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.